

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC ERECTORS, INC.

and

Case 36--CA--3159

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL & ORNAMENTAL IRONWORKERS,
LOCAL NO. 29

SUPPLEMENTAL DECISION AND ORDER

On 8 June 1981, the National Labor Relations Board issued a Decision and Order,¹ and on 22 July 1982, an Order Clarifying Decision and Order in the above-entitled proceeding directing the Company, inter alia, to make whole its employees for loss of wages caused by virtue of the Company's unfair labor practices and to apply the terms and conditions of the applicable collective-bargaining agreement then in effect. On 28 November 1983 the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.² A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 19, on 29 February 1984, issued and duly served on the Company a backpay specification and notice of hearing, alleging the amount of backpay and trust fund contributions due under the Board's Order and notifying the Company that it should file a timely answer complying with the Board's Rules and Regulations. The Company failed to file such an answer.

¹ 256 NLRB 421.

² 718 F.2d 1459. Chairman Dotson and Member Hunter, in joining in this Supplemental Decision and Order, note that they did not participate in the underlying unfair labor practice proceeding and that they accept the court's enforcement of the Board's Order as the law of the case.

Thereafter, on 9 April 1984 the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. On 13 April 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Company failed to file a response to the Notice to Show Cause.

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on the Company about 2 March 1984, specifically states that the Company shall, within 15 days from the date of the specification, file with the Regional Director for Region 19 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be true and the Company shall be precluded from introducing any evidence controverting them. Counsel for the General Counsel, by telephone conversation with the Company's attorney on 21 March 1984 and by confirming letter to the Company's attorney on the same date, notified the Company that unless an answer was received by 28 March 1984 a Motion for Summary Judgment would be filed. As the Company has not filed an answer and has failed to file a response to the Notice to Show Cause, the allegations of the specification and of the Motion for Summary Judgment stand uncontroverted. Therefore, in

accordance with the rule set forth above, the allegations of the specification are deemed admitted as true and are so found by the Board without the taking of evidence in support of allegations.

Accordingly, the Board concludes that the net backpay due the employees is as stated in the computations of the specification, and orders the payment thereof by the Company to the employees. The Board further concludes that the amount of contributions, including liquidated damages and interest thereon, owing to the trust funds on behalf of the employees is as stated in the computations of the specification and orders the payment thereof by the Company to the trust funds.

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Erectors, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall make whole the employees named in Appendix B of the backpay specification attached hereto, by payment to them of the amounts following their names, plus interest thereon to be computed in the manner prescribed in Florida Steel Corp., 231 NLRB 651 (1977),³ until payment of all backpay is made, less tax withholdings required by Federal and state laws. Additionally, the Respondent shall make whole the employees by payment on behalf of the employees to the trust funds listed in the backpay specification of the amounts, including contributions, liquidated damages, and interest, as set forth in Appendices B and C of the backpay specification attached hereto, plus

³ See generally Isis Plumbing Co., 138 NLRB 716 (1962).

interest accrued to the date of payment in the manner set forth in the backpay specification.⁴

Dated, Washington, D.C.

17 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁴ See Ogle Protection Service, 183 NLRB 682 (1970); Merryweather Optical Co., 240 NLRB 1213 (1979).

APPENDIX B

PART 1—Schedule for August 1977 of Names of Individuals Who Would Have Been Dispatched to work at Tualatin project, Number of Hours Individuals were Available to Work, Amount of Backpay owing to Individual^{1/} and amount of contribution owing to Trust Funds in behalf of each individual.^{2/}

AUGUST 1977

<u>Name</u>	<u>Hours</u>	<u>Backpay</u>	<u>Contributions</u>
Brian Woodward	8	92.80	18.24
Doug Oldham	8	92.80	18.24
Tom Penry	8	92.80	18.24
Dave Pederson	8	92.80	18.24
Bill Rossler	8	92.80	18.24
Jim Connelly	8	92.80	18.24
Earl Jepson	8	92.80	18.24
Gordon Brennan ^{3/}	8	92.80	18.24
Chuck Ameran ^{4/}	8	92.80	18.24
Dave Rusch	8	92.80	18.24
Dick Tracy	32	371.20	72.96
Jeff Stephens	32	371.20	72.96
Mike Kealy	32	371.20	72.96
Dale Ilg	32	371.20	72.96
Oliver Jeferies	32	371.20	72.96
Jim Schelly ^{5/}	32	371.20	72.96
Steve Ryan ^{6/}	32	371.20	72.96
Bud Fletcher	32	371.20	72.96
Totals	336	3,897.60	766.08

PART 2—Schedule for September 1977.

SEPTEMBER 1977

Bill Harrington	8	92.80	18.24
Dave Conley	8	92.80	18.24
Don Craig	8	92.80	18.24
Gene Maygra	8	92.80	18.24
Jerry Salvey	8	92.80	18.24
Wayne Wintermute	8	92.80	18.24
Don Willard	24	278.40	54.72
Gordon Brennan	24	278.40	54.72
Mick McGuire	24	278.40	54.72
Bill Meisner	24	278.40	54.72
Howard Kulhne	24	278.40	54.72
Larry Hurd	24	278.40	54.72

1/ Hourly rate of pay is \$11.60.

2/ Hourly rate of contribution is \$2.28.

3/ Worked in September.

4/ Worked in October.

5/ Worked in September.

6/ Worked in September.

<u>Name</u>	<u>Hours</u>	<u>Backpay</u>	<u>Contributions</u>
Jim Shelly	24	278.40	54.72
Dave Conley	24	278.40	54.72
Steve Ryan	24	278.40	54.72
Don Fenlon	24	278.40	54.72
Rod Sprinkle	24	278.40	54.72
Sherman Shine	24	278.40	54.72
Murray Goff	24	278.40	54.72
Don Clarkson	24	278.40	54.72
Jerry Van Horn	24	278.40	54.72
Dave Fields	24	278.40	54.72
Ralph Schuler	24	278.40	54.72
Cliff Frazer	24	278.40	54.72
Bob Bruce	24	278.40	54.72
Al Dougherty	32	371.20	72.96
Homer Sittner	40	464.00	91.20
Royce Von Dross	40	464.00	91.20
John Wenholtz	40	464.00	91.20
Totals	656	7,609.60	1,495.68

PART 3—Schedule for October 1977.

OCTOBER 1977

Dick Lien	56	649.60	127.68
Bill Siminon	56	649.60	127.68
Chuck Morgan	56	649.60	127.68
Jim Grant	32	371.20	72.96
Don Sailor	32	371.20	72.96
Bill Butler	32	371.20	72.96
Ted Westwood	8	92.80	18.24
Virgil Nickelson	8	92.80	18.24
Fred Lyons	8	92.80	18.24
Harry Schwartz	8	92.80	18.24
Bill Ziggy	29.7	344.52	67.72
Hal Habada	29.7	344.52	67.72
Chuck Ameran	29.7	344.52	67.72
Totals	385.1	4,467.16	878.03

PART 4—Schedule of Total Monthly Backpay owing to any Individuals and Total Monthly Contributions owing to Trust Funds.

	<u>Backpay</u>	<u>Contributions</u>
AUGUST 1977	\$ 3,897.60	\$ 766.08
SEPTEMBER 1977	7,609.60	1,495.68
OCTOBER 1977	4,467.16	878.03
Grand Totals	\$15,974.36	\$ 3,139.79

APPENDIX C

Schedule of Liquidated Damages and Interest Through March 15, 1984.

	<u>AUG 1977</u>	<u>SEP 1977</u>	<u>OCT 1977</u>	<u>TOTAL</u>
Total Contributions Due:	766.08	1,495.68	878.03	3,139.79
Interest Charges:	597.54 ^{1/}	1,151.21 ^{2/}	667.30 ^{3/}	2,416.05
Liquidated Damages: ^{4/}	91.93	179.41	105.36	376.70 .

- 1/ At 12% per annum beginning September 16, 1977.
2/ At 12% per annum beginning October 16, 1977.
3/ At 12% per annum beginning November 16, 1977.
4/ At 12% of delinquent amount.